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To: Secretary, Federal Communications Commission
Office of the Secretary
c/o Natek, Inc.
236 Massachusetts Avenue, NE
Suite 110
Washington, DC 20002

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MAY - 9 2007

Federal Communications Commission
Office of the Secretary

From: Jean Prewitt

RE: Ex Parte Meeting/Presentation

Docket: MB Docket 06-121

On May 8, Jean Prewitt, President and CEO of the Independent Film and Television Alliance, accompanied by Meyer Shwarzstein, Lloyd Kaufman, Michael Weiser and Claudia James met with Commissioner Adelstein to discuss IFTA's filing in the Broadcast Ownership proceeding (MB Docket-06-121).

A copy of the IFTA comments and accompanying study filed in that proceeding were provided at that meeting. Copies have been submitted to the Secretary of the FCC.

~~Before The~~
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FILED/ACCEPTED

MAY - 9 2007

**Federal Communications Commission
Office of the Secretary**

In the Matter of)	
)	
2006 Quadrennial Regulatory Review –)	MB Docket No. 06-121
Review of the Commission's Broadcast)	
Ownership Rules and Other Rules)	
Adopted Pursuant to Section 202 of the)	
Telecommunications Act of 1996)	
)	
2002 Biennial Regulatory Review –)	MB Docket No. 02-277
Review of the Commission's Broadcast)	
Ownership Rules and Other Rules)	
Adopted Pursuant to Section 202 of the)	
Telecommunications Act of 1996)	
)	
Cross-Ownership of Broadcast Stations)	MM Docket No. 01-235
and Newspapers)	
)	
Rules and Policies Concerning Multiple)	MM Docket No. 01-317
Ownership of Radio Broadcast Stations)	
in Local Markets)	
)	
Definition of Radio Markets)	MM Docket No. 00-244

To: The Commission

COMMENTS OF THE INDEPENDENT FILM & TELEVISION ALLIANCE

INDEPENDENT FILM & TELEVISION ALLIANCE

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President and Chief Executive Officer

Independent Film and Television Alliance
10850 Wilshire Boulevard, 9th Floor
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October 23, 2006

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SUMMARY

The Independent Film & Television Alliance (**"IFTA"**) the trade association for the independent film and television industry worldwide, hereby submits its comments, together with the newly-conducted industry impact study filed ~~as~~ an appendix, with respect to the pending *Further Notice of Proposed Rulemaking* in MB Docket No. 06-121 ~~et al.~~ IFTA suggests modest new-regulations which would go a long way toward restoring a level of source diversity which has disappeared from American television.

Since the elimination of ~~the~~ Financial Interest and Syndication **Rules**, and their related consent decree, and the relaxation of multiple ownership rules, there has been a sea change in ~~the~~ television marketplace. **Through the** early 1990s, **major** and minor studios and independent production companies licensed programming to networks, which exhibited that programming on large numbers of affiliated independent station licensees and a few owned and operated (O&O) stations, and unrelated syndicators later marketed reruns to independent stations and cableisatellite programming services. That system has now morphed into a world of a few vertically integrated media giants which self-produce, exhibit on networks feeding **groups** of affiliates substantially owned by or having financial ties to ~~the~~ studio/network, and themselves repurpose that programming to their own secondary networks or affiliated cableisatellite programming services. As a result of these structural changes, **there** is little program diversity, program quality ~~has~~ declined, and **the free flow** of ideas has been impeded.

IFTA urges the Commission to adopt reasonable and limited regulations to **restore** some semblance of balance to the marketplace for television programming. In *essence*, **IFTA** requests that ~~the~~ Commission limit the amount of self-sourced programming that the major television networks may distribute on their primary networks, or on secondary

or tertiary digital multicast channels. We also suggest these limits apply to cable program services owned, controlled by, or affiliated with either the major networks or the largest cable MSOs and DBS satellite system operators. **After** much thought, **IFTA** has concluded that a very modest reduction should suffice. Therefore, **IFTA** proposes that these types of entities be limited to supplying 75% of their own programming (including programming supplied by another of the vertically integrated giants); the remaining 25% would be obtained from the panoply of other national and international program producers and distributors.

By taking these very small steps, which are wholly within the Commission's authority, the Commission will go a long way towards insuring the survival of an independent production community. The public interest requires no less.

Before The
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To: The Commission

COMMENTS OF THE INDEPENDENT FILM & TELEVISION ALLIANCE

The Independent Film & Television Alliance (“IFTA”), the trade association of the independent film and television industry worldwide, respectfully submits these comments in response to the Commission’s **Further** Notice of Proposed Rulemaking in the above-captioned proceeding.

I. BACKGROUND

The Independent Film & Television Alliance is the trade association for the independent film and television industry worldwide. ~~Our~~ non-profit organization represents more than 175 members from 22 countries, consisting of independent¹ production and distribution companies, sales agents, television companies, studio-affiliated companies and financial institutions engaged in film finance.²

IFTA was established in 1980 as the American Film Marketing Association. In 2004, the association formally changed its name to the Independent Film and Television Alliance to recognize its global membership and its mission to promote ~~the~~ independent industry throughout the world.

IFTA's membership includes such well-known independent ~~film~~ companies as LIONSGATE, The Weinstein Company, and Lakeshore International. Since 1980, over one-half of the Academy Award winners for Best Picture have been produced by IFTA member companies, including this year's "Crash." IFTA members have produced such relatively large budget films as "The Lord of the Rings" trilogy, "Million Dollar Baby," "Wedding Crashers," "Black Dahlia" and "Mr. and Mrs. Smith," as well as box office surprises such as "My Big Fat Greek Wedding" and "Bend it Like Beckham," both of which were produced on more modest budgets. These popular movies are a source of pride for all of our members.

¹ IFTA defines "independent" producers and distributors ~~as~~ those companies and individuals apart from the major studios that assume the majority (more than **50%**) of the financial risk for production ~~of a film~~ or television program and control its exploitation in the ~~majority~~ of the world.

² Independent films and television programs are financed primarily from sources outside ~~of~~ the seven major U.S. studios. They are financed individually from a number of sources, including by advance commitments from national distributors around the world. ~~They~~ are made at every budget range and may be mainstream, commercial or art-house.

The success of some independents, however, does not alter the fact that most independent producers and distributors are small companies operating on very tight margins. Examples include lesser known companies such as Cine Tel Films, Worldwide Entertainment, and Imagination, which depend for their very survival on a **mix** of revenues from domestic and international theatrical exhibition; syndication to broadcast cable-aud satellite television services; and DVD and video tape sales. It is no exaggeration to say that many of our members bet the company on each film they make.

This bet became much more risky with the repeal **of** the Financial Interest - Syndication rule in the mid-nineties. The action led to vertical integration of the national broadcast networks and the major studios and to problems for the independents. Television which once was a vital market for independent product became unreachable. With access to their own programming, the networks moved quickly to eliminate independent product from their schedules.

First network prime time was closed to independents and with it the lucrative syndication market. Next premium cable was eliminated **as** the vertically integrated network/studios bought existing cable channels and created new ones. Independents were relegated to producing movies for basic cable/satellite programming services at license fees far below the cost of the production elements demanded by the service.

The current situation has become intolerable both for independent producers and for the society at large. It must be addressed not only for the present day but also for the future. **As** we move into the age of the internet and other digital distribution platforms, the vertically integrated conglomerates must not be allowed to replicate practices that strike at the very heart of free competition and free speech.

II. THE RISE OF THE INDEPENDENT FILM AND TELEVISION INDUSTRY

The independent film and television industry has been an integral part of American culture since these mediums were born. We enrich America's marketplace of ideas by encouraging creativity and diversity of opinion, and foster competitiveness in an industry that is increasingly dominated by a select few. Moreover, because of their own knowledge of the entertainment industry, **IFTA** members have a special perspective on and concern about maintaining a competitive marketplace.

The very creation of the modern independent film industry was **made** possible only by decisive government action designed to diminish the market power of the vertically integrated motion picture studios. Under the system which prevailed for decades up until the late 1940s, a handful of Hollywood moguls held a strangle-hold over the industry. Under the system then in effect, the studios controlled virtually all aspects of the industry -- talent, production facilities, distribution networks and exhibition venues. And cinema was the preeminent form of popular entertainment in the period before television ownership became ubiquitous.

A series of antitrust cases brought by the Justice Department against the major film studios, including the Supreme Court's *Paramount* decision, culminated in 1948 with a series of Consent Decrees that severed production and distribution of films from exhibition of films (i.e., theater ownership). See *U.S. v. Paramount Pictures, Inc.*, 334 U.S. 131 (1948) and its progeny. Once movie theaters were transferred to independent ownership, and were freed from studio-imposed strictures like block booking, competition opened up so that independents could distribute their films theatrically in the United States.

Led by American International Pictures, new independent **film** companies rushed into the breach. Open competition also led to the exhibition in the **U.S.** of outstanding foreign films, which previously had been unable to obtain access to **U.S.** screens. For decades after the promulgation of the 1948 Consent Decrees, a special combination of creativity, entrepreneurship, and government policy enabled the independent film industry, and eventually the independent television industry, to flourish.

This golden age of independent production was embellished by the growth of television as a major distributor of film and video programming, beginning about 1950. To IFTA members, these were really two sides of the same market, and independent producers began to move back and forth between theatrical films and television productions. FCC ownership rules which prevented **the** motion picture studios **from** dominating the broadcasting industry, and the 1970 financial interest and syndication (“Fin-syn”) rules along with the Consent Decree of 1977 which prevented the networks from establishing their own vertically integrated oligopolies, aided greatly in maintaining both the theatrical exhibition and television markets as competitive markets for independent producers. *Amendment of Part 73 of the Commission’s Rules and Regulations with Respect to Competition and Responsibility in Network Television Broadcasting*, 23 F.C.C.2d 382 (1970).

A good example of the benefits brought on by the government’s actions fostering the independent production industry can be seen **in the** career of Roger **Corman**, the legendary independent film producer. Corman began making independent films for theaters opened by **the** consent decree; once he was firmly established, **Corman** became the top U.S. distributor of prestigious foreign films. Corman took advantage of **every**

distribution avenue available, making films for the straight-to-video-market(at one time Corman had the largest library of video titles in circulation), then producing Showtime original movies and a Sci-Fi Channel television **series**, all the while continuing to independently produce feature films.

Roger Corman's career is significant to the viewing audience for another reason. As an independent, Corman was able to nurture iconoclastic young filmmakers who were reluctant to submit to the constraints of the studio system. Francis Ford Coppola, Martin Scorsese, Gale ~~Ann~~ Hurd, Carl Franklin, Ron Howard, James Cameron, and Jonathan Demme are among the esteemed directors and producers who made their first films for Corman.' Independent production companies have been **the** nurturing ground for independent attitudes and alternative viewpoints and have been essential in maintaining diversity in the marketplace of ideas.

III. THE PROBLEM

Times have changed. The independent film and television industry, which would have never been born but for the federal government's good work in separating producers from exhibitors, is being severely damaged by the establishment of massive vertically integrated distributors that control not just production and theatrical distribution, but in some cases a combination **of** production, distribution both to theatres and network television, and syndication to broadcast syndication and cable and satellite outlets.

The Commission has long recognized that "there is strong public interest in maintaining diverse sources of network programming as well as diverse sources of off-network programming to local independent broadcast stations." *Evaluation of the*

³ Concord-New Horizons, **Mr.** Corman's production company, is a member of **IFTA** and **Mr. Corman** is a member **of** the **IFTA** Board of Directors.

Syndication and Financial Interest Rules, 6 FCC Rcd 3094, at ¶ 10 (1991). **The**

Commission has also recognized that “there is a strong public interest in maintaining diverse, competitive sources of first-run programming to local independent and affiliate broadcast stations.” *Id.*

The Commission’s decision to eliminate its former Fin-Syn regulations under the assumption that competition would be adequate to curb network excesses did not

undermine its commitment to these “strong public interests,” nor close the door on reregulation. In fact, the Commission specifically noted that it would be impossible to “know to a certainty how **the** networks will behave until they **are free** to act” and that therefore it would be “crucial to monitor developments in the market closely, to ensure that our predictions about network behavior and the effects of that behavior are accurate.”

Evaluation of the Syndication and Financial Interest Rules, 8 FCC Rcd 3282, at ¶ 56 (1993).

Far from a competitive marketplace, independents now have to deal with entities such as **Fox**, which controls the **20th** Century **Fox** studio and its film and television distribution **arms**; two national television networks; O&O stations in key major markets; the DirecTV satellite system; and cable/satellite channels such as **FX** and the National Geographic Channel. **We** also have to deal with NBC, which controls Universal studios; the distribution of Universal films and syndication of off-network NBC product; the NBC and Telemundo networks; O&O stations; and 10 cable/satellite channels, including Bravo and USA Network. Similarly, a key part of our market is controlled by ABC, which is commonly owned with the Disney studio; operates the ABC Television Network; distributes **film** and television programming; has an O&O station group; and controls

important cable/satellite channels such as the Disney Channel and the ABC Family Channel. Finally, we deal with CBS, which, while partially separated from Viacom, continues a close business relationship with that company and its subsidiary, Paramount Pictures: operates television producer and syndicator King Features and is closely tied to theatre owner National Amusements, operates Q&O stations, and operates multiple cable/satellite program services, such as Showtime. Even the non-broadcast market is constrained most of the major cable/satellite program services, if not owned by one of the studios or networks, is owned by one of a handful of cable Multiple System Operators (MSOs), such as Comcast and Time Warner.

Since 1993, the content aired on prime time network television, television syndication and cable and satellite channels increasingly has been controlled by a small number of vertically integrated entities. This dramatic reduction of independent programming on broadcast and cable television is discussed in these comments and the attached 2006 study, "The Impact of the Vertically Integrated, Television-Movie Studio Oligopoly on Source Diversity and Independent Production," by Mark Cooper, Ph.D., which was prepared for IFTA. IFTA submits this study (Appendix A) as part of its comments.

Under the present vertically integrated system, many of the programs carried in prime time have been produced by in-house units and sold internally at reduced prices.

⁴ Viacom split into New Viacom and CBS Corp., but both continue to be under the common control of National Amusements, Inc. New Viacom and CBS Corp. will initially have four common directors. Sumner M. Redstone, the controlling shareholder, chairman of the board of directors and CEO of National Amusements will serve as chairman of the board of directors of both New Viacom and CBS; Shari Redstone, president and a director of National Amusements, will serve as non-executive vice-chair of both companies, and Mr. Philippe P. Dauman, a director of National Amusements, Inc., and Mr. Frederic V. Salerno will serve as directors of both New Viacom and CBS Corp. Viacom, Inc., Registration Statement, filed with the Securities and Exchange Commission on Form S-4, October 5, 2005, at 4. The companies will maintain numerous contractual and other ties. Id. at 227-31.

Other shows are obtained from units of other vertically integrated companies, such as **Fox**. Where there are opportunities for independent producers, the independents face a number of impediments. The networks may force independent producers to fund development and/or produce a pilot on a loss basis and then demand an equity position in a show in order for it to be put on the prime time schedule; they may require control of syndication of an independent program, and then sell that show to an affiliated cable channel at a discount, thus reducing the 'backend' participation of the independent producer; and the network may give independently produced shows a **less** attractive time slot and less time to prove itself when it is placed on the network schedule.

Far from being in the golden age of independent production and distribution of film and video product, we are now in a situation where independent producers face a constantly diminishing marketplace. **As** proud as we independents **are** of our creativity and ingenuity, we believe that today's independent **film** industry faces impenetrable barriers to a free marketplace – barriers which **are** not alleviated by current government policy. **As** a result of those barriers, independent producers and distributors, **from** the smallest to the largest, from the newest entrant to established industry **giants** such as Roger Corman, find it virtually impossible to sell programming to broadcast television or to cable/satellite channels in the **U.S.** today.

IFTA understands other elements of the production industry, including the Directors Guild of America, share these concerns, and will be submitting comments in this proceeding which also attest to this problem.

IV. THE CAUSE

The independent film industry's reverses began with the Commission's repeal of the Fin-syn rules.⁵ in 1993. *Evaluation of the Syndication and Financial Interest Rules*, 8 FCC Rcd 3282 (1993). The rules had prohibited network participation in two related arenas: the financial interest of the television programs they aired beyond first-run exhibition, and the creation of in-house syndication arms, especially in the domestic market. Consent decrees executed by the Justice Department in 1977 solidified the rules, and limited the amount of prime-time programming the networks could produce themselves. This system worked for networks, who profited from advertising revenues, for independent producers and distributors, who profited on the back end through syndication deals, and for audiences, who benefited from a fierce competition among creators to offer compelling programming to the networks.

In 1993 Fin-Syn was allowed to expire, in part because the networks insisted that their entry into the production business would increase the number of competitors in this field, a claim that proved to be inaccurate. What has happened is that the networks have consolidated and expanded their hegemony over a much larger territory. Today a network orders up a new program from its captive movie studio, broadcasts it on its on broadcast network in prime-time, then reruns it – *repurposes* it - a few days later on one

⁵ In its 1991 *Report and Order* ("R&O") in *Docket No. 90-162*, the FCC repealed a portion of its Fin-Syn Rules but retained other portions of the rule. In *Schurz Communications v. FCC*, 982 F.2d 1043 (7th Cir. 1992). The Court vacated the 1991 R&O and remanded the matter to the Commission for further consideration. In its *Second Report and Order* ("Second R&O") in *MM Docket No. 90-162*, adopted in 1993, the Commission repealed significant portions of its fin-syn rules and scheduled the remaining rules for expiration. 8 FCC Rcd 3282, granted in part, *Memorandum Opinion and Order* ("MO&O") in *MM Docket No. 90-162*, 8 FCC Rcd 8270 (1993), *aff'd sub nom. Capitol Cities/ABC, Inc. v. FCC*, 29 F3d 309 (7th Cir 1994). The Commission subsequently called the matter up for early consideration and eliminated the remaining aspects of fin-syn. *Report and Order in MM Docket No. 95-39*, 10 FCC Rcd 12165 (1995).

of its cable networks. Later its syndication arm may offer it for further reruns to broadcast stations.

The repeal of government constraints on vertical integration, and the retention of very limited horizontal constraints, have resulted in a new business model in which major motion picture studios are co-owned with national television networks; in which a single entity typically operates two broadcast television networks and many national cable/satellite networks; in which every significant player owns a captive production house, distribution and syndication arms, and the ultimate exhibition venues, whether theatre, cable MSO or direct broadcast satellite operator. In this new world of media behemoths, creativity and diversity of programming are sacrificed to the bottom line; fresh and engaging dramatic and comedic productions stand no chance of being purchased from outside producers when the buyer can produce internally another repackaged version of the same old low budget reality and game shows.

V. THE HARM

What does this mean for viewers? In the old regime, when producers vied to produce stimulating programming, viewers were treated to meaningful programs like “All in the Family,” “Mash,” and “The Cosby Show.” However, conglomerates rarely produce prime-time programming that challenge their viewers. The current prime-time lineup demonstrates that the shrunken pool of captive producers are most likely to imitate each other’s programming, however awful it may be.

The cost cutting that inevitably comes with consolidation has the networks focused on acquiring inexpensive programming such as the ubiquitous reality shows versus the more expensive (and substantive) hour-long dramas, mini-series and movies-

of-the-week. For example, **NBC** announced on October 19 that it would **make** a number of further cost cutting moves to enhance its already profitable bottom line, including dropping all scripted programming **from** the 8:00-9:00 Eastern prime time hour, to be replaced with reality **and** game show programming. **NBC Taking Big Step Back From Television**, *The Washington Post*, October 20, 2006. at **A1**.

Today the networks' prime-time schedules are focused on reality programming and other formula programming. The rest of the schedule is filled by internally produced programs. In network television, the amount of programming in prime time owned by the networks has grown from 15 percent in 1995 to over 75 percent today⁶. At the same time, independent programming has fallen from 50 percent to just 18 percent'. The networks do not have an economic incentive to compete in even a limited marketplace for independent programming; they have only an incentive to purchase **their own** programs. The loser is the viewer and the American public,

The harm to the television audience goes beyond the lowering of quality standards that comes when competition is eliminated. Dozens of production and syndication companies have been eliminated in the last ten years, destroying an infrastructure of independent production, a training ground for future producers, directors and writers of programming with an important perspective. Without the important new blood supplied by the independent production community, the future of prime time programming is bleak indeed.

⁶ Cooper, Mark, "The Impact of the Vertically Integrated, Television-Movie **Studio** Oligopoly on Source Diversity **and** Independent Production," October, 2006, p. 31.

⁷ Cooper, **Exhibit IV-1**, p. 39.

VI. THE SOLUTION

As we have shown, there is no longer a substantial independent sector in film or television programming. Distribution channels for independent films are disappearing, and there is very little independent programming in broadcast, prime time or syndication.⁸ The result is a decline in competition and a decline in diversity available to consumers. This proceeding offers the opportunity for the Commission to take steps to reverse that trend, and to serve the public interest by increasing the diversity of programming available to the American public.

While many independent producers are artists, they are also businessmen and realists. We realize that the Commission is unlikely to make dramatic structural changes to sever the studios from the networks, or to break up the media conglomerates that dominate the industry. Therefore, IFTA has proposed what it believes are modest steps that the Commission can adopt which would deliver positive benefits far outweighing the regulatory costs that would be incurred in their implementation and which would not unduly hamstring the networks, the studios, or other program distributors.⁹ These proposals focus on steps which are clearly within the Commission's authority in view of the role of networks as Commission licensees and the Commission's statutory authority to insure competition in the cable and satellite industries.

A. Network Prime Time. IFTA submits that a rational first step would be for the Commission to adopt rules that assure some opportunity for the public to benefit from the

*Cooper, Exhibit IV-1, p. 39 and Exhibit IV-5, p. 43.

⁹ While stated somewhat differently than the proposals we understand will be submitted by the Directors Guild of **America** and other key members of the creative community, we believe our position is fully consistent with those proposals. We do offer certain enhancements to those proposals in the digital and cable areas. Except as to scope, our proposals are not intended to be materially in disagreement with the Guild position on any issue.

viewpoints of a diverse range of program producers and distributors. Therefore, we believe that the Commission should prohibit the four major television networks from filling more than 75% of their prime time schedules with programming produced by (a) the network, or any captive or affiliated entity, (b) entities controlled by or affiliated with, any other major national television network, or (c) entities controlled by or affiliated with, any of the top ten national cable MSOs or any national direct broadcast satellite operator. This would leave 25% of prime time programming available to be filled by literally hundreds of independent program producers and distributors, thus creating a vibrant and competitive market for prime time television programming.”

IFTA focuses on the network prime time schedule, rather than the overall program day, because prime time is the most important point of access for program suppliers. Prime time remains the most financially remunerative domestic revenue opportunity in television; it is the gateway to the lucrative syndication market; and it affects the prices that non-U.S. television channels will pay **for** product.

Without the incentives of fair access to the prime time schedule and the potential monetary rewards offered by the TV syndication market, independents have almost completely withdrawn from the development and production of prime time television **series**. With the relatively modest step proposed above, the Commission will have taken a great leap towards reestablishing the vitality of the independent production and distribution industry.

¹⁰ In referring to a “network,” IFTA intends to include only those entities that meet the primary test for television network status – 15 hours of prime time programming a week to 25 affiliates in at least 10 states and broadcast in the English language. Using this test will insure that smaller incipient networks have greater freedom to rely on internal programming sources until they reach a recognized level of viability.

B. Digital Multicast We also believe that the Commission should **take** steps to insure that the benefits of digital broadcasting **are** used to expand **the** opportunities for independent voices to obtain exposure to **the American** public. One major advantage of the digital transition is that broadcast stations will have the opportunity to “multicast” – to broadcast multiple streams of either high definition or standard definition programming – on either a full or part time basis. The Commission has recognized that with this new opportunity come certain obligations. For example, **the** FCC has applied children’s programming obligations to digital multicasts, and **has** limited **the** extent to which such programming may be repetitious of programming shown on other multicast channels. See *Children’s Television Obligations of Digital Television Broadcasters*, 39 CR 617 (Sept. 29, 2006).

IFTA believes that the Commission should **use** this proceeding as an opportunity to insure that digital multicast channels are open to entry by independent program producers. Therefore, we propose that the Commission adopt regulations relating to multiplex channels provided by one of the national television networks to its affiliates. We believe that such channels (other than the channel used to transmit **the** primary network feed) should be prohibited from carrying more than 75% of any entertainment programming that is sourced from (a) the network, or any captive or affiliated entity, (b) entities controlled by or affiliated with, any other major national television network, or (c) entities controlled by or affiliated with, any of the top ten national cable MSOs or any national direct broadcast satellite operator. By definition this would not affect news or **sports** channels that do not **carry** entertainment programming. **Unlike the** rule for primary network program channels, however, it would apply to all hours of **the** programming day.

Adoption of the proposed relief will permit the digital multicast channels to be used to encourage the development of diverse programming sources. This will also limit the ability of the networks to dominate the multicast programming of their affiliates, giving local stations the opportunity to better serve their own community. The proposal clearly is beneficial to the public interest.

C. Cable and Satellite Television. At this time, cable and satellite television do not provide a real outlet for independent programmers to sell product, and independent programming continues to decline as a percentage of their programming. This is due to the vertical integration in the cable and satellite business¹¹. The largest cable operators favor their programming over independently produced programming. Fox, one of only two DBS system operators is itself the owner of and integrated studio and television network business. No more than 29 cable/satellite channels are legitimate buyers of scripted, fiction programming. Almost all of these channels are owned or controlled by one of the four major networks or by a major cable television system owner - all vertically integrated media conglomerates.

Until about 2000, premium pay cable/satellite channels, such as Showtime and HBO were a significant market for independent productions. In 2000, there was a precipitous drop in the acquisition of independent programming by these organizations, and now independent programming rarely appears on Showtime, HBO, or the other premium cable/satellite channels. Generally, programming for these channels is done in-house or by producers who have contracted with the pay channel to produce product under many of the same unfair terms and conditions as are imposed by the networks for prime time exhibition. Chief among these is that the conglomerate retains ownership

¹¹ cooper, p.3,

rights. These practices have migrated to basic cable/satellite channels, where channels such as Lifetime, Sci Fi, and USA (all of which are owned by vertically integrated media conglomerates) may buy independent product, but do so while imposing onerous terms. Most prominent of these terms is the refusal to pay an independent producer a license fee that will cover production expenses, while taking exploitation rights in additional media and markets. This forces an independent producer to shoot a production in areas of the world with production incentives, to pre-sell foreign rights at a discount in order to generate funding large enough to cover the short fall, and to sacrifice revenue potential that might otherwise have been realized following the initial telecast.

We submit that the Commission should impose source limitations on the major cable operators similar to those we propose for network television. We believe that the Commission should adopt a rule providing that basic and pay cable and satellite channels be prohibited from carrying more than 75% of any entertainment programming that is sourced from (a) any entities operated, controlled by or affiliated with, any of the top ten national cable MSOs or any national direct broadcast satellite operator; or (b) any national television network, or any captive or affiliated entity of such a network.”

VII. CONCLUSION

As a result of the unfettered development of massive media conglomerates, there are clear barriers today that prevent a fair, level, robust and truly diverse marketplace for television and cable/satellite programming. Independent programmers have no leverage against the immense market power they face from the networks, and cable and satellite system operators. As a result, there is less diversity of programming choice for

¹⁰ To the extent that this proceeding is not an appropriate venue for these suggestions regarding program source regulation in the cable and satellite industry, TA urges the Commission to immediately institute a new rulemaking to consider just such regulations.

consumers and a significant loss in terms of the quality of programming and flow of ideas.

It is incumbent upon the Commission to protect the public interest in a vibrant and diverse programming marketplace by adopting regulations that provide some balance to the market. For the reasons set forth in these Comments, IFTA urges the Commission to adopt limited and reasonable source Limitations that will provide at least a modicum of opportunity for independent programming voices to develop and flourish. The suggestions set forth herein should therefore be adopted by the Commission.

Respectfully submitted,

**INDEPENDENT FILM & TELEVISION,
ALLIANCE**

By: /s/ Jean M. Prewitt
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October 23, 2006

APPENDIX A

**THE IMPACT OF THE VERTICALLY INTEGRATED,
TELEVISION-MOVIE STUDIO OLIGOPOLY
ON SOURCE DIVERSITY
AND INDEPENDENT PRODUCTION**

**Mark Cooper, Ph.D.,
Director of Research,
Consumer Federation of America**

2006